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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation
Against:

Case No. VN-2010-3324

SAMANTHA LYNNE SHIPPEE
14822 Ryan Street
Sylmar, CA 91342

OAH No. 2012040734

Vocational Nurse License No.
VN 239515


Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on December 14, 2012.

IT IS SO ORDERED this 14th day of November, 2012.



Todd D'Braunstein, PT
President

Discipline by the Department of Social Services

3. On October 13, 2011, in California Department of Social Services case number 6108303001AA, pursuant to a Stipulation and Waiver that was executed by appellant (and signed to indicate that it was "approved as to form and content" by appellant's attorney) the Department of Social Services placed appellant on probation for a year, with probation conditioned on her completing eight hours "of training by an approved vendor on the applicable [regulations in Title 22 of the California Code of Regulations], emphasizing the non-discretionary nature of the regulations, and training on the care and supervision of persons with dementia[.]"¹ The probation arose out of an incident at the licensed residential care facility for the elderly where appellant worked, which had been on probation since before appellant began working there. On October 28, 2010, an elderly client suffering from dementia wandered into the facility's unlocked walk-in freezer in search of ice cream. While the incident led to a number of allegations in the Accusation against the facility for failure to supervise and failure to secure the freezer, the Accusation's sole allegation against appellant was that the client was found in the freezer at about 10 p.m. and appellant "did not immediately telephone 911...until approximately 10:22 p.m." The Accusation alleged that this was a delay that breached the standard of care set out in California Code of Regulations, title 22, section 87465, subdivision (g), which provides, "The licensee shall immediately telephone 9-1-1 if an injury or other circumstance has resulted in an imminent threat to a resident's health including, but not limited to, an apparent life-threatening medical crisis[.]" In the Stipulation and Waiver (at paragraph 1), appellant agreed to the discipline, but the same paragraph also said, "All admissions of facts and conclusions of law contained in this stipulation are made exclusively for this proceeding, and shall not be deemed to be admissions for any purposes in other administrative, civil or criminal action, forum or proceeding." For present purposes, therefore, appellant did not admit any allegation in the Department of Social Services' Accusation.

4. At the hearing on this citation, appellant confirmed that the client wandered into the freezer, but testified that she was actually found in the freezer at 10:15 p.m. rather than 10 p.m. (and that a surveillance camera videotape showed as much), and thus only about seven minutes elapsed between finding the client and calling 911. Appellant testified that her actions did not violate any standard of care: she sent for oxygen at 10:15 (it was not clear from her testimony whether the oxygen was necessary or used) and applied heat packs before the paramedics arrived; the client had mild frostbite and cyanosis (bluish skin) at her extremities, was alert and oriented (i.e., she knew her name and knew where she was, which, given her state of dementia, was as much as could have been expected of her under normal circumstances), and spent an hour waiting in the emergency room with no ill effects after being taken there by the paramedics. Appellant argued that under these circumstances, there was no apparent life-threatening medical crisis, and thus no requirement that she call 911.

¹ The order said, "Respondent is excluded from employment and presence in any facility licensed by the Department," but then said "the exclusion shall be stayed for a probationary period" of one year."

(3) Consequences of the violation, including potential or actual patient harm.

(4) History of previous violations of the same or similar nature.

(5) Evidence that the violation was willful.

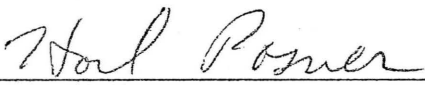
3. While the discipline imposed by the Department of Social Services is a ground for finding a violation of the Board's regulations, the factors in subdivision (b) compel reduction of the violation to Class "C." The incident occurred nearly two years ago (Factual Finding 3), and appellant had no violations before then and has had no violations since. (Factual Finding 5.) She dealt with a cold patient by warming her, and waited as little as seven minutes, and no more than 22 minutes, before calling the paramedics. (Factual Findings 3 and 4.) The medical personnel at the emergency room to which the client was taken did not treat the situation as a life-threatening emergency, waiting an hour to treat her with no ill effects to her. (Factual Finding 4.) Nor is there any evidence of willful misconduct.

4. CCR title 16, section 2523.2, subdivision (e) provides, "The fine for each Class "C" violation shall not exceed \$1,000. There is no minimum amount. Under these circumstances, a fine of \$250 is appropriate.

ORDER

The administrative fine imposed in Citation No. CV-2010-3324 is reduced to \$250, and the citation is affirmed as modified. Appellant is ordered to pay an administrative fine of \$250 to the Board within 30 days of the effective date of this decision.

DATED: September 19, 2012



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings

You are hereby ordered to pay an administrative penalty (fine) in the amount of **\$1,001.00** within **thirty (30) days after service of the citation**.

Payment of this administrative penalty should be made directly to the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833. Payment will only be accepted in the form of a cashier's check or money order and must include the citation number. Please complete and submit the enclosed Payment of Fine – Waiver of Appeal Rights form with your payment.


Appeal Rights

You may appeal this citation or any portion thereof. Please use the enclosed Notice of Appeal form to request an Informal Citation Review Conference or a formal Administrative Hearing.

Your request for an Informal Citation Review Conference must be in writing and submitted to the Board within **fourteen (14) calendar days after service of the citation**.

Your request for a formal Administrative Hearing must also be in writing and submitted to the Board within **thirty (30) calendar days after service of the citation**.

Please refer to the enclosed Statement of Rights for additional appeal information. Failure to request an Informal Citation Review or Administrative Hearing within the time specified above will waive your right to contest this citation. If you neither pay the fine nor request a review within the allotted time frame, **your license will not be renewed** until the fine is paid.


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer

August 9, 2012
Date

ATTACHMENTS

- Payment of Fine – Waiver of Appeal Rights
- Notice of Appeal
- Statement of Rights

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BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation
Against:

Case No. VN-2010-3324

SAMANTHA LYNNE SHIPPEE
14822 Ryan Street
Sylmar, CA 91342

OAH No. 2012040734

Vocational Nurse License No.
VN 239515

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the Final Decision in the above entitled matter.

This Decision shall become effective on December 14, 2012.

IT IS SO ORDERED this 14th day of November, 2012.



Todd D'Braunstein, PT
President

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA

In the Matter of the Citation Against:

Samantha Lynne Shippee,

Appellant.

Case No. VN-2010-3324

OAH No. 2012040734

PROPOSED DECISION

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on August 20, 2012.

Deputy Attorney General Heather Hua represented Complainant Teresa Bello-Jones, Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (the Board).

Appellant Samantha Shippee represented herself.

Oral and documentary evidence was received, and the matter was submitted August 20, 2012.

Appellant Samantha Shippee appeals a citation from the Board imposing a penalty of \$1,001 under Business and Professions section 2878.8. For the reasons set out below, the citation is affirmed as modified.

FACTUAL FINDINGS

Jurisdiction

1. Complainant issued this Citation in her official capacity.
2. Appellant has held a license as vocational nurse since January 9, 2009. Her license (number VN 239515) will expire November 30, 2012. The Board issued this citation on October 14, 2011, and appellant timely appealed. The Board issued a First Amended Citation on August 9, 2012.

Discipline by the Department of Social Services

3. On October 13, 2011, in California Department of Social Services case number 6108303001AA, pursuant to a Stipulation and Waiver that was executed by appellant (and signed to indicate that it was “approved as to form and content” by appellant’s attorney) the Department of Social Services placed appellant on probation for a year, with probation conditioned on her completing eight hours “of training by an approved vendor on the applicable [regulations in Title 22 of the California Code of Regulations], emphasizing the non-discretionary nature of the regulations, and training on the care and supervision of persons with dementia[.]”¹ The probation arose out of an incident at the licensed residential care facility for the elderly where appellant worked, which had been on probation since before appellant began working there. On October 28, 2010, an elderly client suffering from dementia wandered into the facility’s unlocked walk-in freezer in search of ice cream. While the incident led to a number of allegations in the Accusation against the facility for failure to supervise and failure to secure the freezer, the Accusation’s sole allegation against appellant was that the client was found in the freezer at about 10 p.m. and appellant “did not immediately telephone 911...until approximately 10:22 p.m.” The Accusation alleged that this was a delay that breached the standard of care set out in California Code of Regulations, title 22, section 87465, subdivision (g), which provides, “The licensee shall immediately telephone 9-1-1 if an injury or other circumstance has resulted in an imminent threat to a resident's health including, but not limited to, an apparent life-threatening medical crisis[.]” In the Stipulation and Waiver (at paragraph 1), appellant agreed to the discipline, but the same paragraph also said, “All admissions of facts and conclusions of law contained in this stipulation are made exclusively for this proceeding, and shall not be deemed to be admissions for any purposes in other administrative, civil or criminal action, forum or proceeding.” For present purposes, therefore, appellant did not admit any allegation in the Department of Social Services’ Accusation.

4. At the hearing on this citation, appellant confirmed that the client wandered into the freezer, but testified that she was actually found in the freezer at 10:15 p.m. rather than 10 p.m. (and that a surveillance camera videotape showed as much), and thus only about seven minutes elapsed between finding the client and calling 911. Appellant testified that her actions did not violate any standard of care: she sent for oxygen at 10:15 (it was not clear from her testimony whether the oxygen was necessary or used) and applied heat packs before the paramedics arrived; the client had mild frostbite and cyanosis (bluish skin) at her extremities, was alert and oriented (i.e., she knew her name and knew where she was, which, given her state of dementia, was as much as could have been expected of her under normal circumstances), and spent an hour waiting in the emergency room with no ill effects after being taken there by the paramedics. Appellant argued that under these circumstances, there was no apparent life-threatening medical crisis, and thus no requirement that she call 911.

¹ The order said, “Respondent is excluded from employment and presence in any facility licensed by the Department,” but then said “the exclusion shall be stayed for a probationary period” of one year.”

5. Appellant is no longer on probation and no longer employed by the facility that employed her in 2010. There is no evidence that she committed any violations before or after the incident at issue. She is now the resident care director at another licensed residential care facility for the elderly.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2875² authorizes the Board to discipline a vocational nurse's license for any reason provided in Article 3 of the Vocational Nursing Practice Act (which begins with section 2875). The Board has authority to impose discipline against appellant's license under Business and Professions Code section 2878.8, which provides, "The board may deny any application or may suspend or revoke any license issued under this chapter based upon the denial of licensure, suspension, restriction, or other disciplinary action of a license by another state, any other government agency, or by another California health care professional licensing board." The license discipline imposed by the Department of Social Services is therefore, in and of itself, a cause for the Board to discipline appellant's license.

2. The Board, "in lieu of filing an accusation against any licensee, may issue a citation which may contain an administrative fine...against that licensee for any violation of law [or regulation adopted by the Board] which would be grounds for discipline." (Cal. Code Regs., tit. 16, § 2523, subd. (a).³) The Board issued a Class "B" citation to appellant. CCR title 16, section 2523.2, subdivision (d)(1), provides that a Class "B" violation includes "a violation that results in or could have results in [sic] patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure consumer safety." The violation of CCR title 22, section 87465, subdivision (g) for which the Department of Social Services disciplined appellant fits into this description of a Class B violation. (Factual Finding 3.) But categorizing a violation is more than a matter of fitting the description of the particular violation at issue to one of the violation descriptions in the regulations. CCR title 16, section 2523.2, subdivision (b) sets out other criteria for classifying violations—criteria that would be unnecessary if the classification descriptions in CCR title 16, subdivision (d) disposed of all categorization questions. If subdivision (b) is to be given any effect, the descriptions in subdivision (d) have to be regarded as examples, not as an exclusive list of violations. Subdivision (b) provides:

In determining the violation class for licensee violations, the following factors shall be considered:

- (1) Nature and severity of the violation.
- (2) Length of time that has passed since the date of the violation.

² Further references to the Business and Professions Code are cited as sections.

³ In further references, "California Code of Regulations" is abbreviated "CCR."

(3) Consequences of the violation, including potential or actual patient harm.

(4) History of previous violations of the same or similar nature.

(5) Evidence that the violation was willful.

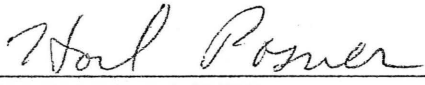
3. While the discipline imposed by the Department of Social Services is a ground for finding a violation of the Board's regulations, the factors in subdivision (b) compel reduction of the violation to Class "C." The incident occurred nearly two years ago (Factual Finding 3), and appellant had no violations before then and has had no violations since. (Factual Finding 5.) She dealt with a cold patient by warming her, and waited as little as seven minutes, and no more than 22 minutes, before calling the paramedics. (Factual Findings 3 and 4.) The medical personnel at the emergency room to which the client was taken did not treat the situation as a life-threatening emergency, waiting an hour to treat her with no ill effects to her. (Factual Finding 4.) Nor is there any evidence of willful misconduct.

4. CCR title 16, section 2523.2, subdivision (e) provides, "The fine for each Class "C" violation shall not exceed \$1,000. There is no minimum amount. Under these circumstances, a fine of \$250 is appropriate.

ORDER

The administrative fine imposed in Citation No. CV-2010-3324 is reduced to \$250, and the citation is affirmed as modified. Appellant is ordered to pay an administrative fine of \$250 to the Board within 30 days of the effective date of this decision.

DATED: September 19, 2012



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings



FIRST AMENDED CITATION ORDER

Pursuant to Business and Professions Code Section 125.9, the Board of Vocational Nursing and Psychiatric Technicians (hereinafter referred to as the "Board") issues this class 'B' citation to:

Samantha Lynne Shippee
14822 Ryan Street
Sylmar, CA 91342

Citation Number	Fine Assessed
CV-2010-3324	\$1,001.00

Licensing History

Board records reflect that on **January 9, 2009** the Board issued license number **VN 239515** to **Samantha Lynne Shippee**; said license will expire on **November 30, 2012**, unless renewed.

Cause for Citation

Violation of **Section 2878.8** of the California Business and Professions Code, which reads as follows:

"The board may deny any application or may suspend or revoke any license issued under this chapter based upon the denial of licensure, suspension, restriction, or other disciplinary action of a license by another state, any other government agency, or by another California health care professional licensing board. A certified copy of the finding shall be conclusive evidence of that action provided that, if from another state, the findings establish an act which if committed in California would be grounds for discipline."

Explanation of Violation:

A Board investigation found that the California Department of Social Services (CDSS) filed a First Amended Accusation against you on March 14, 2011 for violating Health and Safety Code sections 1569.50(a), 1569.50(b), 1569.58 and Regulation sections 87465(g), 87777(a), and 87775(a). The First Amended Accusation alleged that, on or about October 28, 2010, at approximately 10:00 p.m., a client was found inside a facility walk-in freezer in an apparent life-threatening medical crisis involving hypothermia and frostbite. It was further alleged that you failed to contact 911 until approximately 10:22 p.m.

In October 2011, you entered into a Stipulated Settlement with CDSS in which you admitted to the allegations in the First Amended Accusation. You were excluded from employment and presence in any facility licensed by CDSS, from having contact with clients of any facility licensed by CDSS, and from holding a position as a member of a board of directors, an executive director, or an officer of a licensee of any care facility licensed by CDSS, and shall not be registered as a trustline provider. However, the exclusion was stayed for a probationary period of one (1) year subject to terms and conditions.

Fine and/or Order of Abatement

You are hereby ordered to pay an administrative penalty (fine) in the amount of **\$1,001.00** within **thirty (30) days after service of the citation.**

Payment of this administrative penalty should be made directly to the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833. Payment will only be accepted in the form of a cashier's check or money order and must include the citation number. Please complete and submit the enclosed Payment of Fine – Waiver of Appeal Rights form with your payment.

Appeal Rights

You may appeal this citation or any portion thereof. Please use the enclosed Notice of Appeal form to request an Informal Citation Review Conference or a formal Administrative Hearing.

Your request for an Informal Citation Review Conference must be in writing and submitted to the Board within **fourteen (14) calendar days after service of the citation.**

Your request for a formal Administrative Hearing must also be in writing and submitted to the Board within **thirty (30) calendar days after service of the citation.**

Please refer to the enclosed Statement of Rights for additional appeal information. Failure to request an Informal Citation Review or Administrative Hearing within the time specified above will waive your right to contest this citation. If you neither pay the fine nor request a review within the allotted time frame, **your license will not be renewed** until the fine is paid.


TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer

August 9, 2012
Date

ATTACHMENTS

- Payment of Fine – Waiver of Appeal Rights
- Notice of Appeal
- Statement of Rights

SW:aw